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APR 16 2010

OFFICE OF PETITIONS

In re Application of :
Ishzak et al. :
Application No. 09/525,183 :
Filed: March 14, 2000 :
Attorney Docket No. NEC 99641 :
For: Magnetic Signal Transmission Line :

DECISION ON PETITION

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term adjustment entitled "Request for Reconsideration of Patent Term Adjustment," received on October 23, 2009.

The request under 37 CFR 1.705 is dismissed.

Petitioner notes that the Notice of Allowance mailed on October 8, 2009, for the above-identified application stated that the Patent Term Extension is 0 days and did not contain an indication of patent term adjustment. Petitioner notes that the application was filed on March 14, 2000. Petitioner asserts that the Office lost the filed and Applicants had to provide reconstruction of the file which was completed on April 19, 2007 and then Applicants had to wait another two years for the first Action on the merits.

35 U.S.C. § 154(b) (as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000. 35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000).

The above-identified application was filed on March 14, 2000. Accordingly it is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b), in effect on June 8, 1995. The provisions of 35 U.S.C. § 154(b) in effect on May 29, 2000 do not apply, because the amended version of 35 U.S.C. § 154(b) only applies to applications filed on or after

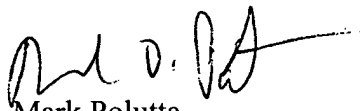
May 29, 2000. Pursuant to 35 U.S.C. § 154(b), in effect on June 8, 1995, an applicant can receive patent term extension only if there was an appellate review, interference or a secrecy order delays as set forth in the statute. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

Petitioner's assertion that the application is eligible for patent term adjustment provisions pursuant to 35 U.S.C. § 154 and 37 CFR 1.702 -1.705 is not persuasive. The effective date provision (§ 4405) in the legislation clearly states that the amendments to 35 U.S.C. § 154 apply to applications filed on or after the date that is 6 months after the date of enactment, i.e., May 29, 2000. This provision does not include applications that were filed prior to the date of enactment or even immediately after the date of enactment, but applications that were filed on or after the date that is 6 months after the date of enactment, see *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term*, 65 FR 56366 (Sept. 18, 2000) 1239 Off Gaz. Pat. Office Notices 14 (Oct. 3, 2000).¹

The delay in the allowance and issuance is regrettable, but the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154(b).

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. § 41 (a)(7). The required \$200 fee for the request under 37 CFR 1.705 has been charged to Deposit Account No. 08-1391.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner for Patent Examination Policy

¹ Sykes v. Dudas, 573 F.Supp 2d 191, 89 USPQ2d 1423 (D.D.C.2008).